

McGahan, William Christopher-07-07-04.txt

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION
4 GRAND JURY
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8 IN RE:

9 GRAND JURY INVESTIGATION CRC 03-0233

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15 BE IT KNOWN that on Wednesday, July 7, 2004,
16 the testimony of WILLIAM CHRISTOPHER MCGAHAN was taken
17 before the Grand Jury of the United States District
18 Court for the Middle District of Alabama, Northern
19 Division, in the Grand Jury Room, United States
20 Courthouse, One Church Street, Montgomery, Alabama;
21 MR. STEPHEN P. FEAGA, MR. LOUIS V. FRANKLIN,
22 MR. J. B. PERRINE, and MR. JOHN GIBBS interrogating.

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1 WILLIAM CHRISTOPHER MCGAHAN

2 The witness, having first been duly sworn to
3 speak the truth, the whole truth and nothing but the
4 truth, testified as follows:

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4 figure out their investment banking services, but have
5 UBS provide those services.

6 Q. So -- and was HealthSouth one of the
7 companies that you hoped to take with you?

8 A. Yes. Well, hoped to do business with, yes.

9 Q. Hoped to do business with.

10 A. Yeah.

11 Q. And were you -- were you successful in that?
12 Did you talk to HealthSouth about it at all before you
13 made the move?

14 A. No.

15 Q. Okay. Having made the move, did you, after
16 making the move, continue to do business with
17 HealthSouth?

18 A. We -- we did do business with HealthSouth,
19 and -- and we were able to do business with
20 HealthSouth after we moved, yes.

21 Q. Okay. You made this move in March of '99?

22 A. Yes, sir.

23 Q. Let me direct your attention to a time frame
24 in June, July of 1999 and ask you if -- in the course
25 of your experience as an investment banker doing

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1 business with HealthSouth and other companies, if
2 anything unusual happened at that -- during that time
3 frame in -- again, based on your experience in the
4 investment banking world.

5 A. Yes.

6 Q. Would you tell the ladies and gentlemen of
7 the grand jury what happened that you considered to be
8 unusual?

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9 A. Well, we were -- and I believe this is what
10 you're referring to. We -- I was solicited for a
11 donation for -- or I was solicited -- I was solicited
12 for a donation on behalf of UBS to make.

13 Q. Do you recall approximately when you would
14 recall first being solicited to make this donation?

15 A. I don't specifically, but I believe it to be
16 very late June or early July of 1999.

17 Q. And how -- how is it that you first became
18 aware that you were being solicited? Who contacted
19 you?

20 A. Mr. Mike Martin called me in -- first and
21 told me that I was going to get a call, after the call
22 that we were on at that time, from him and Mr. Scrushy
23 telling us that they wanted UBS to make a sizable
24 donation to a -- to a charity in Alabama.

25 Q. Who did you know Mike Martin to be?

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1 A. He was the chief financial officer of
2 HealthSouth at the time.

3 Q. Okay. And did he tell you what the size of
4 this sizable donation was going to be?

5 A. I believe he did tell me at that -- on that
6 call what the size of the donation was to be, but I
7 don't remember exactly what he initially said.

8 Q. Okay. Well, do you remember approximately
9 what he said?

10 A. Well, it was at least 250 to \$300,000.

11 Q. Okay. And what, if anything, did you respond
12 to him when he called you and told you this?

13 A. Well, I said somewhat facetiously, thanks a

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14 lot, you know; I'm -- you know, I'm -- you know,
15 I'm -- and I said it in a sarcastic way -- I'm waiting
16 for the call.

17 Q. why did you say it in a sarcastic way?

18 A. Because the amount of the donation that they
19 were asking for was a very large number and a number
20 that -- or an amount that I historically had never
21 even been solicited for before.

22 Q. Okay. Did you consider the request to be
23 unreasonable?

24 A. I thought it was -- I guess unreasonable
25 would be a good word -- would be a word to use, yes.

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1 I thought it was just a request which -- particularly
2 given the fact that we had -- or I had just moved my
3 job to be one where I just -- I didn't know where I
4 could go to get that done.

5 Q. Now, did they hit you and -- you had just
6 moved --

7 A. Yes.

8 Q. -- from Smith Barney to this new company?

9 A. Right.

10 Q. And would it be fair to say that you were
11 hoping to impress this new company with your ability
12 to attract business and do business and make money for
13 them?

14 A. Yes.

15 Q. Was the fact that HealthSouth -- was
16 HealthSouth one of your -- from your perspective a
17 potential major client and someone that you -- a
18 client you were counting on being able to recruit and

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19 attract?

20 A. It was a very important company and a very --
21 and one of the largest health care service companies
22 in the -- in the United States, so yes.

23 Q. So did you feel at that point in time some
24 pressure?

25 A. Yes.

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1 Q. Was that based on things that Mr. Martin was
2 saying to you?

3 A. Well, what I was referring to, I -- we were
4 feeling -- or I was feeling pressured to produce
5 revenues and fees for my new company at that point, as
6 opposed to donations going out the door. My job was
7 to get fees and revenues in the door. So that's what
8 I was referring to, you know, as a backdrop prior to
9 the call from Mr. Martin.

10 Q. All right. Now, you said in this call, he
11 told you that -- that he and Mr. Scrushy would be
12 calling you back?

13 A. Yes.

14 Q. Did they?

15 A. Yes, they did.

16 Q. About how long after that first call did that
17 call come back in where it's now Mr. Scrushy and
18 Mr. Martin?

19 A. Shortly thereafter, within a half a business
20 day or so, or less, they both called.

21 Q. Okay. And what, if anything, did Mr. Scrushy
22 relate to you that -- if you can, in words and
23 substance, tell us.

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24 A. Yeah. I don't remember the specific words,
25 but the gist of it was that -- that there was this

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1 cause in Alabama that -- that was a good cause, that
2 HealthSouth was supporting, that he wanted UBS to
3 support, that -- that -- and -- and the substance of
4 it is that he expected us to be able to support this
5 cause.

6 Q. Okay. At some point in time, did this
7 conversation terminate?

8 A. It did, yes.

9 Q. Okay. Where were you then? Did you run out
10 and get the check?

11 A. No, I didn't run out and get the check. I
12 was in my office and hung up the phone and sort of sat
13 back and sort of thought about the predicament that I
14 was -- you know, the pressure I was being put under
15 by -- by Mr. Scrushy and Mr. Martin and -- and sort of
16 hoped it would go away, quite candidly.

17 Q. So did you hear from them again?

18 A. After that, I got a series of phone calls
19 from Mr. Martin increasing the pressure on -- on me,
20 asking what I was doing to get to the check, asking --
21 or to get the donation, asking whether or not -- you
22 know, where the process stood and all those sorts of
23 things.

24 Q. And what were you saying back to him?

25 A. I was saying, you know, I'm working on it,

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1 you know; that's -- you know, that's a lot of money.

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2 And --

3 Q. Were you still hoping it would go away?

4 A. I was still hoping it would go away.

5 Q. At some point in time, did Mr. Martin make
6 any particularly strong statement to you that you
7 recall?

8 A. He did. After he -- he continued to escalate
9 his tone and his -- his -- and the words that he used
10 and continued to put an -- and continued to increase
11 the pressure that he was putting on me. And he used,
12 you know, profanity to -- to express himself.

13 Q. Would you please tell the ladies and
14 gentlemen of the grand jury exactly what he said to
15 you when he used profanity to emphasize his point?

16 A. Well, he said that we would be fucked if we
17 didn't come up with the money.

18 Q. And what did you understand that to mean?

19 A. I understood it to mean that we were not
20 going to be their investment banker unless we figure
21 out a way to make the donation.

22 Q. Okay. Did -- was a way figured out to make
23 the donation?

24 A. Ultimately, yes.

25 Q. Would you describe the process and what the

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1 decision was and how it -- how -- your involvement in
2 how it happened?

3 A. Yes, I will. So after -- Mike Martin
4 continued to call and continued to, for lack of a
5 better word, berate me and to try to -- and put
6 pressure on me to try to figure out how UBS can make

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7 the donation.

8 Around that time, Eric Hanson called me and --
9 and said he was following up from -- after speaking
10 with Mr. Scrushy and that he wanted to know where
11 the -- the donation stood. And I explained to
12 Mr. Hanson, as I was trying to explain to Mr. Martin,
13 that that was a sizable donation that was off the
14 charts in terms of things that we were capable of
15 doing and, you know, it was just a very difficult
16 thing for us to get over the goal line.

17 Mr. Hanson -- and I forget exactly the words that
18 were used in this conversation with Mr. Hanson; but
19 he, by way of background, was also very close with a
20 company called Integrated Health Services and their
21 CEO. And -- but Mr. -- Mr. Hanson and I have a
22 conversation. And, again, I don't remember if it was
23 one conversation or a couple of conversations. But
24 the end result of it was that Mr. Hanson was going to
25 go to Integrated Health Service and solicit the

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1 donation from them.

2 At that time, there was a fee that was -- that
3 was outstanding from Integrated to UBS. Question --
4 there was a question in my mind of whether or not that
5 was a fee which was due or whether it was a fee which
6 was being requested; but Mr. Hanson was going to go to
7 Integrated and say, you know, if you would, please
8 make this donation and UBS will work with you on that
9 fee, something to that effect.

10 Q. Okay. Did UBS work with them on the fee?

11 A. I believe that we did, yes -- or we did, yes.

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12 Q. Okay. And so was there ultimately an
13 agreement reached between UBS and Integrated Health
14 Services and HealthSouth that if -- if IHS, Integrated
15 Health Services, would make this sizeable, 250 to
16 \$300,000, contribution -- you're not sure what was the
17 exact amount -- that UBS would forgive some fees that
18 IHS was supposed to pay to UBS for services you had
19 rendered for them?

20 A. I think you generally have it, although I
21 think that the fees that I just was -- to pay us,
22 which was -- the additional fee, which was a million
23 dollars, I'm not sure whether they ever actually, you
24 know, sort of agreed to do that or whether or not that
25 was just a request; but, essentially -- or the million

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1 dollars in additional fee that was being at least
2 requested from IHS, we would reduce down to I believe
3 ultimately \$700,000 plus expenses -- so it was
4 \$733,000 -- and that IHS would then make the donation
5 to the cause that Mr. Scrushy wanted them to.

6 Q. So, in essence, they got about \$267,000 worth
7 of debt forgiveness, and they made a -- if they made a
8 \$250,000 contribution, they made that contribution or
9 fee forgiveness?

10 A. Or -- or a -- I -- you know, that -- that's
11 one way to look at it, yes, sir.

12 Q. Well, what's the other way to look at it?

13 A. The other way, which is -- and again, from
14 our perspective or from my perspective, we had a
15 million dollars which was due on the transaction with
16 them which they had paid us; and then there was an

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17 additional request for an additional million dollars,
18 which, from my recollection, is -- they weren't happy
19 that they were going to have to pay us because it was
20 one where the original agreement was a million
21 dollars. So that million dollars was sort of
22 highly questionable -- or was questionable of whether
23 or not we were going to get that or not.
24 Q. Let me see if I can describe that. We spoke
25 yesterday, did we not?

18

1 A. Yes, sir.
2 Q. And I believe you said that the original
3 transaction that you were brokering, the agreement was
4 that you would be paid a million dollars by IHS and a
5 million dollars by the other company that you were
6 brokering the sale between, correct?
7 A. Yes, sir. Yes, sir.
8 Q. And that you said your boss at this new place
9 where you had come to work came to you and told you
10 that you had -- you had undervalued your fees and that
11 you should have asked for more money?
12 A. Yes, sir.
13 Q. So he went back to them and negotiated with
14 them and got an agreement from them to provide an
15 additional -- was it one million each?
16 A. No, just one.
17 Q. One. Total of one million?
18 A. Yes.
19 Q. To -- for -- for the services of UBS in this
20 transaction?
21 A. Correct.

22 Q. And so it was his understanding that they had
23 agreed to do that?

24 A. It was his -- yes, sir.

25 Q. Okay. And so what happened is that once IHS

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1 made this \$250,000 contribution, if, in fact, that's
2 what it was --

3 A. Right.

4 Q. -- they did not have to pay the whole
5 million; they only paid 733,000 of it?

6 A. That's right.

7 Q. The additional million.

8 A. That's right.

9 Q. All right. And I gather what -- the reason
10 you're being a little -- and I don't want to use the
11 word "coy" about that. You're saying you were a
12 little uncomfortable with the fact that your boss went
13 back and asked for more money after you had negotiated
14 the fee.

15 A. That's right. And I think that the CFO at
16 Integrated, who was below the person who agreed to the
17 additional million, wasn't happy about it either. And
18 so -- so that's why I'm -- you know, there -- so the
19 people who were actually working on the transaction
20 had an original agreement and he wasn't happy about
21 the additional million dollars.

22 Q. I see. And this CFO at Integrated Health
23 Services, was this Charles Taylor Pickett?

24 A. It was.

25 Q. Okay. Now, who was it that was over him that

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1 agreed to pay the additional?

2 A. Mr. Elkins, Robert Elkins.

3 Q. And who is Robert Elkins?

4 A. I believe -- well, that's his boss, and I
5 believe that's who my boss spoke to. And he is the --
6 he was the chief executive officer of Integrated.

7 Q. Now, then he was kind of to Integrated, would
8 it be safe to say, what Richard Scrushy was to
9 HealthSouth?

10 A. Yes, at the time.

11 Q. Now, what size company was Integrated Health
12 Services at this time?

13 A. It was -- it later on went bankrupt; but at
14 the time, it was a fairly sizable company, in the
15 billions of dollars of debt and equity market cap.

16 Q. In fact, one of the transactions that you --
17 your company brokered the deal on was a deal between
18 IHS and HealthSouth; is that right?

19 A. That's right.

20 Q. Was there a point in time when you actually
21 negotiated an agreement whereby HealthSouth sold to
22 Integrated Health Services approximately \$1.2 billion
23 in nursing home assets?

24 A. Yes, there was.

25 Q. Okay. And did y'all earn a fee from that?

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1 A. We did.

2 Q. Of approximately how much?

3 A. Approximately five to \$7 million, something
4 like that.

5 Q. Okay. How long prior to this transaction
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6 that's going on in 1999 did that take place, roughly?

7 A. About a year and a half before, so the end of
8 '97.

9 Q. Okay. Now, you mentioned just now that
10 Integrated Health Services went bankrupt later, after
11 this donation series of events took place.

12 A. They did. And it did.

13 Q. And it did?

14 A. Yes, sir.

15 Q. Do you recall on or around October the 31st
16 of 1999, several months -- let's see. You have August
17 and then September and most of October. About three
18 months later, sometime in late October, do you recall
19 having a conversation with Richard Scrushy about that
20 donation again?

21 A. I recall a conversation with Mr. Scrushy. I
22 don't recall specifically what the date was, but I
23 believe it was around that time.

24 Q. Okay. And would you tell the ladies and
25 gentlemen of the grand jury about that?

22

1 A. Sure. And -- and just to start broadly, but
2 sometime between mid September and Thanksgiving, I had
3 a conversation with Mr. Scrushy when it was becoming
4 apparent that Integrated was in financial trouble.
5 And around that time, there was a reimbursement change
6 going on in the nursing home industry. And many
7 nursing home companies were on the verge of
8 bankruptcy.

9 And I said to Mr. Scrushy at the time, you know,
10 you -- you know, did you see Integrated -- you looked,
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11 you know, very smart in selling those nursing homes to
12 Integrated about a year and a half ago for 1.25 or
13 \$1.2 billion because the reimbursement change has come
14 into effect, Integrated is struggling, and now it
15 looks like Integrated is, you know, not going to make
16 it and is going to go bankrupt. Mr. Scrushy asked how
17 long that was -- you know, how long do I think it
18 would be until Integrated went bankrupt. And I said,
19 you know, like, I don't know, but maybe the end of the
20 year or early part of next year; because these things
21 sometimes take a little time.

22 And he said -- and he said to me that, can you --
23 can you believe that they haven't cashed that check
24 yet? And I, you know, thought that was an odd thing
25 to say.

23

1 Q. why did you think it was odd?

2 A. well, I'm trying to remember back when I --

3 Q. Did you think it was odd that they -- that
4 they still were holding a check that had been cut
5 three months earlier?

6 A. well, yeah, I do. I -- yes is the answer to
7 the question. I don't --

8 Q. So he says to you, can you believe that
9 they're still holding that check?

10 A. Or they haven't cashed that check yet.

11 Q. Okay.

12 A. And then he says to me -- and I think the
13 conversation actually was just sequentially again,
14 you're very smart to sell that stuff to Integrated. I
15 believe he then said to me what I just said, which was
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16 that can you believe that they're not -- they haven't
17 cashed that check yet. Then, he then asked me about
18 how long it would take to -- for them to go bankrupt.
19 And then at the end of the conversation, he says,
20 well, geez, you know, I got to -- I got to go get on
21 that.

22 Q. That was after you told him when you thought
23 they would go bankrupt?

24 A. Right.

25 Q. And he said, I've got to go -- I've got to go

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1 get on that?

2 A. I've got to go get on it. And that was the
3 end of the conversation. And I just thought it was an
4 unusual conversation.

5 MR. FEAGA: Does any member -- fellows, do
6 you have any questions?

7 EXAMINATION

8 BY MR. PERRINE:

9 Q. Yeah. Mr. McGahan, I want to ask you about
10 Eric Hanson. Other than this one phone call you had
11 with him, what was -- was that his only involvement in
12 dealing with you as far as trying to get the money for
13 this donation that Richard Scrushy asked you to
14 deliver?

15 A. Well, there were two -- there were at least
16 two. One was the I'm-following-up, after I spoke with
17 Richard Scrushy. That was the initial one. And then
18 I know that there was another phone call when -- you
19 know, I don't know if -- well, first of all, there was
20 that first phone call. And I don't know if there was
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